
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Capstar TX Limited Partnership)	File No. EB-03-HL-092
)	
Licensee of Station KIKI-FM)	NAL/Acct. No. 200432860004
Honolulu, Hawaii)	
Facility ID # 34592)	FRN 0003474947

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 22, 2004

By the Resident Agent, Honolulu Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Capstar TX Limited Partnership (“Capstar”), licensee of station KIKI-FM, 93.9 MHz, in Honolulu, Hawaii, apparently willfully and repeatedly violated Section 1.1310 of the Commission’s Rules (“Rules”)¹ by failing to comply with radio frequency radiation (“RFR”) maximum permissible exposure limits applicable to facilities, operations, or transmitters. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Capstar is apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. **The RFR Rules.** Section 1.1310 of the Rules defines the maximum permissible exposure (“MPE”) limits for electric and magnetic field strength and power density for transmitters operating at frequencies from 300 kHz to 100 GHz.³ These MPE limits include limits for “occupational/controlled” exposure and limits for “general population/uncontrolled” exposure. The

¹47 C.F.R. § 1.1310. *See also Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Report and Order*, ET Docket No. 93-62, 11 FCC Rcd 15123 (1996), *recon. granted in part, First Memorandum Opinion and Order*, 11 FCC Rcd 17512 (1996), *recon. granted in part, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd 13494 (1997) (“*Guidelines*”).

²47 U.S.C. § 503(b).

³*See* 47 C.F.R. § 1.1310, Table 1. The MPE limits are generally based on recommended exposure guidelines published by the National Council on Radiation Protection and Measurements (“NCRP”) in “Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,” NCRP Report No. 86, Sections 17.4.1, 17.4.1.1., 17.4.2, and 17.4.3 (1986). In the frequency range from 100 MHz to 1500 MHz, the MPE limits are also generally based on guidelines contained in the RF safety standard developed by the Institute of Electrical and Electronics Engineers, Inc. (“IEEE”) and adopted by the American National Standards Institute (“ANSI”) in Section 4.1 of “IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz,” ANSI/IEEE C95.1-1992 (1992).

occupational exposure limits apply in situations in which persons are exposed as a consequence of their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure.⁴ The limits of occupational exposure also apply in situations where an individual is transient through a location where the occupational limits apply, provided that he or she is made aware of the potential for exposure. The more stringent general population or public exposure limits apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure.⁵ Licensees can demonstrate compliance by restricting public access to areas where RFR exceeds the public MPE limits.⁶

3. The MPE limits specified in Table 1 of Section 1.1310 are used to evaluate the environmental impact of human exposure to RFR and apply to "...all facilities, operations and transmitters regulated by the Commission."⁷ Further, the FCC's rules require that if the MPE limits are exceeded in an accessible area due to the emissions of multiple transmitters, actions necessary to bring the area into compliance "are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter."⁸ Pursuant to Table 1 in Section 1.1310 of the Rules, the general population RFR maximum permissible exposure limit for a station operating in the frequency range of 30 MHz to 300 MHz is 0.200 mW/cm².⁹

4. Broadcast stations that filed applications after October 15, 1997, for an initial construction permit, license, renewal or modification of an existing license were required to demonstrate compliance with the RFR MPE limits, or to file an Environmental Assessment and undergo environmental review by Commission staff.¹⁰ In addition, all existing licensees, including all licensees at multiple transmitter sites, were required to come into compliance with the RFR MPE limits by September 1, 2000, or to file an Environmental Assessment.¹¹

⁴47 C.F.R. § 1.1310, Note 1 to Table 1.

⁵47 C.F.R. § 1.1310, Note 2 to Table 1.

⁶See, for example, *OET Bulletin 65*.

⁷See 47 C.F.R. §§ 1.1307(b), 1.1307(b)(1), 1.1310.

⁸*Guidelines, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd at 13520-21, 13524; 47 C.F.R. § 1.1307(b)(3). Power density is equal to the square of the electric field strength divided by the characteristic impedance of free space (377 ohms). Similarly, power density is equal to the square of the magnetic field strength times the characteristic impedance of free space. The power density is expressed in milliwatts per square centimeter. *Guidelines, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd at n.74.

⁹47 C.F.R. § 1.1310, Table 11.

¹⁰*Guidelines, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd at 13538; 47 C.F.R. § 1.1307(b).

¹¹*Guidelines, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd at 13540; 47 C.F.R. § 1.1307(b)(5). See also, *Public Notice*, Year 2000 Deadline for Compliance with Commission's Regulations Regarding Human Exposure to Radiofrequency Emissions (released Feb. 25, 2000); *Public Notice*, Erratum to February 25, 2000 Public Notice, 15 FCC Rcd 13600 (released April 27, 2000); *Public Notice*, Reminder of September 1, 2000, Deadline for Compliance with Regulations for Human Exposure to Radiofrequency Emissions, 15 FCC Rcd 18900 (released Aug. 24, 2000).

5. On September 25, 2003, a field agent from the Commission's Honolulu Resident Agent Office conducted RFR measurements at an antenna tower structure located at 1095 Dillingham Boulevard, Honolulu, Hawaii.¹² The tower is located on the corner of Dillingham Boulevard and Kokea Street. The base of the tower is encircled by a cinder block wall with a small wooden fence on top, in the middle of the Kokea Center strip mall parking lot.¹³ A large sign reading "Caution – High Level Radio Frequency Energy Area – No Trespassing" was posted on the front side of the wooden fence above the entry door of the wall. The parking lot is accessible by the public at all times.

6. The field agent, using a calibrated RFR meter, identified a 10 foot by 5 foot area exceeding the RFR MPE public limits, in the adjacent area just outside the tower fencing. The area was located approximately three feet south of the tower fence between two large metal trash bins. The overall power density level measured 0.254 mW/cm² or 127% of the RFR MPE public limits. The agent determined that there were five radio stations operating on the tower, four AM stations, KSSK(AM), KHBZ(AM), KHVH(AM) and KHRA(MA), and one FM station, KIKI-FM, at the time of investigation.¹⁴ The field agent advised Capstar's local station engineer, on September 25, 2003, of the apparent existence of RFR exceeding the public limits in a public area outside the tower fence. Arrangements were later made with the licensees to conduct further measurements and to determine the RFR contributions from each of the individual radio station transmitters.

7. On November 20, 2003, field agents from the Honolulu Field Office returned to the site. With the cooperation of all the broadcasters on the tower and the assistance of KIKI-FM engineers, the field agents conducted additional RFR measurements in the 50 square foot area identified on September 25, 2003, as exceeding the public RFR MPE limits. The field agents made RFR measurements with all stations transmitting to establish the overall power density level.¹⁵ The field agents then requested each station on the tower to temporarily and sequentially power down its transmitter. The field agents made four spatially averaged RFR power density measurements while each of the five broadcast stations transmitters was powered off to determine the power density level produced by each transmitter and to determine which transmitters were producing power density levels that exceeded 5% of its individual MPE limit at the identified area.¹⁶

¹²On June 10, 2003, this field agent conducted an antenna structure registration inspection at this broadcast tower. During the course of the inspection, the agent observed that the personal RFR monitor worn on his shirt pocket was emitting an audible alert indicating significant levels of RFR in several areas outside the tower fencing. The agent visually observed that the monitor's 100% red LED indicator was consistently lit, indicating potential RFR readings exceeding MPE public limits, in the areas that coincided with the audible alerts. The agent noted the general areas in the parking lot in which the monitor was alarming.

¹³The single story mall shops vary from fast-food restaurants and retail/wholesale suppliers to sales outlets. The shops form a rough 100-yard square with the tower in the middle, immediately adjacent to customer and business parking stalls.

¹⁴Capstar is the licensee of KSSK(AM), KHBZ(AM), KHVH(AM) as well as KIKI-FM, and the registered owner of the tower structure. The fourth AM station on the towers, KHRA, is licensed to Trade Center Management, Inc.

¹⁵Measurements in both September and November were conducted within the 50 square foot non-complaint area, but not necessarily at the same spot within the non-complaint area. The two agents made more thorough and repeated site measurements on November 20, 2003. The variations of the measured power density levels on each date reflect these changes in the measurement locations and, as noted infra, an apparent progressive deterioration of an isocoupler on the tower. The RFR MPE limits were exceeded on both dates.

¹⁶Section 1.1307(b)(3) of the Rules states: "In general, when the guidelines specified in § 1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance are the shared responsibility of all licensees whose transmitters produce, at the area in question, power

8. The measurements taken by the agents on November 20, 2003, indicated an RFR field in the publicly accessible area between the tower and two large metal trash bins that now significantly exceeded the FCC's MPE limits for the general public. The overall RFR power density measurement at the site exceeded the MPE public limit by 85.6% with all stations in operation.¹⁷ Based on the measurements and further calculations, the power density level produced by KIKI-FM was 0.36 mW/cm², which is equivalent to an RFR power density measurement exceeding the MPE public limit by 83%. KIKI-FM's RFR contribution was 98% of the total field in this same publicly accessible area at the site, based on these measurements and further calculations.

9. In light of the November 20, 2003 measurements showing that KIKI-FM was the source of the RFR level exceeding the public MPE limits, the KIKI-FM engineers advised the FCC field agents on November 20, 2003, that they wanted to ascertain the maximum power level KIKI-FM could operate to be in compliance with the MPE public limits. At the request of the KIKI-FM engineers, the agents repeated the RFR measurements at the site on November 20, 2003, as KIKI-FM sequentially reduced the transmitter output power to 90%, 70%, 60% and 50% of the authorized power of 100 kW. RFR levels were found to be in compliance with public MPE limits only when KIKI-FM was operating at a reduced power level of 50%, or 50 kW. The KIKI-FM engineers stated that KIKI-FM would remain at 50 kW until they could make repairs to bring the site into compliance within the MPE public limits.¹⁸

10. On January 15, 2004, Capstar filed a request with the Commission for a special temporary authority ("STA") to operate at reduced power while taking the necessary steps to address RFR concerns at the tower.¹⁹ Capstar stated in the STA request that an isocoupler on the tower was malfunctioning, causing RF fields outside the tower fence that exceed the public MPE for RF with the station operating at full authorized power. On May 27, 2004, the KIKI-FM engineer contacted the Commission's Honolulu Resident Agent Office and advised that they performed the necessary repairs and hired a consultant to conduct measurements to ensure they were now at 58% of the MPE public limits while operating at full power. On June 7, 2004, the Honolulu field agents again performed RFR measurements, this time finding no publicly accessible areas exceeding the RFR MPE when KIKI-FM operated at full authorized power.²⁰

density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter..." 47 C.F.R. § 1.1307(b)(3).

¹⁷Table 1 of Section 1.1310 specifies the applicable MPE limits in terms of power density (mW/cm²) for FM and television broadcast station transmitters. The maximum power density levels permitted are frequency dependent. During this inspection, the FCC agents utilized a FCC owned, calibrated RF meter with a calibrated probe that measures the electric field from RF signals in the band 300 kHz to 40 GHz. The probe is a sensor designed to simultaneously measure the RF emissions of multiple transmitters on widely separated frequencies. The probe's frequency response curve is "shaped" to mimic the FCC MPE limits. The energy of the signals the probe detects are converted to a power density, then calculated as a percentage of the MPE limit for the appropriate frequency and added together. The results are displayed on the meter as a percentage of the MPE limit. *See, generally, OET Bulletin 65* at Section 3, Measuring RF fields.

¹⁸ Commission field agents performed unannounced RFR measurements in February 2004 and confirmed that the area around the tower was still in compliance with the Commission's public RFR MPE limits, with KIKI-FM operating at 50 kW.

¹⁹ File No. BSTA-20040115AEP, granted January 26, 2004. A request for an extension of the STA was filed and accepted on May 13, 2004. This request was dismissed on July 16, 2004.

²⁰The agents used the same RFR meter used on September 25, 2003, and November 20, 2003, at the site. With all stations operating at full power, the site measured 7.38% of the public exposure limits. The agents walked around the parking lot area surrounding the perimeter of the tower and observed that the highest level reading they could

III. DISCUSSION

11. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.²¹ The term “repeated” means the commission or omission of such act more than once or for more than one day.²²

12. Section 1.1310 of the Rules requires licensees to comply with RFR exposure limits.²³ Table 1 in Section 1.1310 of the Rules provides that the general population RFR maximum permissible exposure limit for a station operating in the frequency range of 30 MHz to 300 MHz is 0.200 mW/cm². Section 1.1307(b)(3) of the Rules states in part that “when the guidelines specified in Section 1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter.”²⁴

13. On September 25, 2003, Commission field agents found a publicly accessible area exceeding the public RFR MPE by more than 25% at the 1095 Dillingham Boulevard broadcast tower site. The field agents notified Capstar, the licensee of four of the five stations on the tower of the potential public safety issue. Although Capstar was willing to meet with the field agents at a later date to take individual measurements of all of the stations on the tower, Capstar apparently took no action in response to the field agents’ warning, that a publicly accessible area exceeding the public MPE limits existed around the outside of the tower fence. On November 20, 2003, Commission agents found KIKI-FM producing approximately 98% of an RF field in a publicly accessible area that exceeded the public RFR MPE limits by up to 85.6%. Capstar was required to ensure that by September 1, 2000, their station was in compliance with the RFR MPE limits adopted by the Commission in 1996, or file an Environmental Assessment. Capstar also bears the responsibility to restrict access to areas that exceed the RFR limits or to modify the facility and operation so as to bring the station's operation into compliance with the RFR exposure limits prior to public or worker access to the impacted area.²⁵

14. The area found to exceed the public MPE limits was not enclosed within protective fencing. Several small businesses were located within 100 feet from the noncompliant area. On both days, no RFR warning signs were found in the immediate vicinity demarcating the area exceeding the

find was at was at 31.38% of the MPE public limits.

²¹Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Red 4387 (1991).

²²Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

²³47 C.F.R. § 1.1310.

²⁴47 C.F.R. § 1.1307(b)(3).

²⁵47 C.F.R. §§ 1.1307(b)(1), 1.1307(b)(5), 1.1310. Additional guidance is provided in OET Bulletin 65.

Commission's public RFR MPE limits. Although a fence did surround the base of the broadcast tower and did have an RFR warning sign, the area where RFR was found to exceed the public MPE limits was not encompassed within a fence or properly marked with RFR warning signs. In addition, Commission field agents observed that the area was accessible to the general public when disposing of their trash in the trash bins located outside the fenced area. The overall lack of controlled access to the area and the unmarked and unrestricted access observed by the Commission agents at the time of the inspections made areas near the trash bins, including the area found to exceed the limits, publicly accessible and thus held to the Commission's public MPE limits. We find that Capstar did not restrict public access to an area where RFR exceeded the public MPE limits.

15. Based on the evidence, we find that the Capstar willfully and repeatedly violated Section 1.1310 of the Rules by exceeding the RFR MPE limits for the general public in a publicly accessible area and by failing to adequately take measures to prevent the public from accessing an area that exceeded the RFR exposure limits.

16. The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")²⁶ does not specify a base forfeiture for violation of the RFR maximum permissible exposure limits in Section 1.1310.²⁷ However, the Commission has determined that an appropriate base forfeiture amount for violation of the RFR MPE limits is \$10,000, reflecting the public safety nature of the rules.²⁸

17. We propose the \$10,000 base forfeiture amount for KIKI-FM, which produced RFR power density levels in excess of the public MPE and was responsible for 98% of the RFR level exceeding the public MPE in a multi-emitter environment. In this case, KIKI-FM apparently failed to comply with Section 1.1310 of the Rules, produced power density levels that exceeded the public MPE limits, and failed to take measures to adequately prevent the public from accessing areas that exceeded the RFR exposure limits. Consequently, it is appropriate to hold Capstar apparently liable for a \$10,000 forfeiture.

18. In assessing the proposed monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²⁹ While Capstar ultimately reduced the RFR levels produced by KIKI-FM to a permissible level, we are troubled that such action was not taken until after the second warning was given to Capstar by the field agents concerning the excessive RFR amounts found in a publicly accessible area near the Capstar tower. During those months the RFR produced by KIKI-FM, in a publicly accessible area, increased to a level that exceeded the Commission's public RFR MPE limits by 83%. We believe that the seriousness of the safety violation warrants the proposed forfeiture amount of \$10,000. Accordingly, applying the *Forfeiture Policy Statement*, Section

²⁶*Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon denied*, 15 FCC Rcd 303 (1999).

²⁷The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

²⁸*A-O Broadcasting Corporation*, 17 FCC Rcd 24184 (2002).

²⁹47 U.S.C. § 503(b)(2)(D).

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1.80, and statutory factors to the instant case, we conclude that Capstar, licensee of KIKI-FM, is apparently liable for a \$10,000 forfeiture.

IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80 of the Commission's Rules, Capstar TX Limited Partnership, licensee of station KIKI-FM is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for violations of Section 1.1310 of the Rules.³⁰

20. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Capstar TX Limited Partnership shall pay the full amount of the proposed forfeiture or shall file a written statement seeking reduction or cancellation of the proposed forfeiture.

21. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

22. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Honolulu Resident Agent Office, P.O. Box 971030, Waipahu, HI 96797-1030, and must include the NAL/Acct. No. referenced in the caption.

23. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

24. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.³¹

25. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the address listed above for the filing of the response. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no

³⁰ 47 C.F.R. §§ 0.111, 0.311 1.80 and 1.1310.

³¹ See 47 C.F.R. § 1.1914.

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effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

26. IT IS FURTHER ORDERED THAT a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Capstar TX Limited Partnership, 2625 S. Memorial Drive, Suite A, Tulsa, OK 74129.

FEDERAL COMMUNICATIONS COMMISSION

Ryan Hagihara
Resident Agent
Honolulu Office
Western Region
Enforcement Bureau

Enclosure: FCC List of Small Entities

Cc: Capstar TX Limited Partnership
Clear Channel Communications
Licensee of Station KIKI-FM
650 Iwilei Road, Suite 400
Honolulu, Hawaii 96817